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SUBJECT: BRAMMERTZ AGREES TO MAKE PROCEDURAL CASE FOR
LEBANON TRIBUNAL

REF: A. STATE 34691

[¶](#)B. USUN 182

Classified By: Ambassador Alejandro D. Wolff, per 1.4 (b) and (d).

[¶](#)1. (C) Summary. During a bilateral meeting with UN International Independent Investigation Commission (UNIIC) Chief Serge Brammertz on March 19, Ambassador Wolff said the U.S. would support an early extension of the Commission's mandate for up to one year and urged Brammertz to make the case for an extension in his quarterly briefing to the UNSC on March 21. Noting the Council might be called upon to act to establish the Lebanon Special Tribunal given the political impasse in Beirut, Ambassador Wolff also encouraged Brammertz to make procedural, non-political arguments in favor of creating the court. Predicting the investigation would need to continue for at least one more year, Brammertz agreed to support the UNIIC extension by arguing for continuity in the investigation as early as possible. He also undertook to tell the Council -- in response to questions asked of him during consultations -- that establishing the court could help the Commission's work and doubts about its creation could hinder its investigation. He also said he could transfer files to a prosecutor's office "at any time" and that UNIIC intends to present a consolidated list of such evidence in June.

[¶](#)2. (C) Summary, cont,d. Asked about the progress of his investigation, Brammertz asserted that, as his latest report shows, UNIIC had moved forward substantially on the political context surrounding Hariri's assassination and expressed surprise that neither the Syrian nor Russian ambassadors had objected to those findings. If he had been asked just to present the conclusions of his investigation rather than assemble evidence to meet a certain burden of proof, Brammertz said he could wrap up his work in six months. But putting together a case that could succeed at trial would require more time, as well as "inside information" from witnesses that have yet to emerge. Brammertz reported no major problems with Syrian or third-country cooperation with the Commission. Asked about his personal plans, he said he must decide whether to resign his ICC position in June 2007, but would be willing to stay with the UNIIC for six more months if the UN could find him another job afterward.

Progress of the Investigation

[¶](#)3. (C) Brammertz began by expressing hope that the Security Council "would understand where his investigation is going" even if UNIIC cannot be as forthcoming as it might like due to the confidential nature of a judicial proceeding. Noting that he remained "very satisfied" with progress in the

investigation, Brammertz asserted that the investigation had moved forward substantially in terms of the political context surrounding Hariri's assassination and expressed surprise that neither the Syrian nor the Russian ambassadors had objected to this part of the UNIIIC's last report. Asked how close the Commission is to completing its work, Brammertz said an optimist might conclude UNIIIC is 80 percent done because it understands who was threatening whom and who was in charge in Lebanon at the time. But in order to meet the evidentiary burden of a court, the UNIIIC still needs some "inside information" to connect all the dots. A pessimist, therefore, might conclude that UNIIIC is only 20 percent done with its investigation because the "three inside witnesses" have yet to emerge. While he said the investigation would need at least one more year to conclude its work, Brammertz clarified that had the UNSC decided not to create a tribunal and instead asked him to present the conclusions of his investigation rather than to prove a defendant's guilt beyond a certain standard of proof, he could present his conclusions in six months. Ensuring that a case that goes to trial has the evidence to be successful, however, takes longer.

Early Extension for UNIIIC

¶4. (C) Ambassador Wolff told Brammertz that the U.S. would support a resolution to be introduced following the March 21 UNSC consultations that would extend UNIIIC's mandate for up to one year from June 15, 2007. Recalling that Brammertz had welcomed an extension of UNIIIC's mandate in his March report but had not specified when it should be extended, Ambassador Wolff predicted that several UNSC members might question the rationale for early Council action (Note: The UNIIIC's mandate expires on June 15, 2007. End Note.) Due to uncertainty over the timeline for the completion of the

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Commission's investigation and the establishment of the tribunal, certain delegations might also suggest extending the UNIIIC's mandate for six months instead of one year. Noting it would be more effective for Brammertz to answer these questions given his apolitical position, Ambassador Wolff urged Brammertz to address these issues in his remarks during closed Council consultations on March 21.

¶5. (C) While he declined to tell the Council when it should extend UNIIIC's mandate on the grounds that that is a fundamentally political issue, Brammertz undertook to respond to such questions, if asked, by noting that it would be useful to ensure continuity in the investigation as early as possible. Although the UN had already worked out arrangements to give UNIIIC staff employment contracts until the end of 2007, Brammertz agreed that an early extension of the mandate would encourage Commission staff to remain in their jobs. In response to questions about the duration of the mandate, Brammertz said he could not advise the Council to adopt either a six month or one year extension, but he could predict that the investigation would need at least one more year to conclude its work. Given the possibility that the tribunal could be established and become operational within one year, he opined that the resolution could stipulate that the prosecutor's office could take over from the UNIIIC as appropriate if the tribunal becomes operational during UNIIIC's mandate.

Procedural Arguments for Tribunal

¶6. (C) Turning to the tribunal, Ambassador Wolff argued that the best solution to the current impasse would be for the Lebanese parliament to ratify the UN-GOL agreement establishing the court. But since that solution appears unlikely, the Council would probably have to consider its own role in ensuring that the tribunal is established. Recalling that Brammertz had told him in December 2006 that the Commission would benefit from early establishment of the

tribunal because witnesses would be more likely to come forward to testify, Ambassador Wolff emphasized that the best arguments in favor of early establishment are legal, not political. If Brammertz were to say, for example, that he had files to transfer to a prosecutor, that would create a legal reason for the Council to act if the Lebanese fail to do so. Ambassador Wolff asked Brammertz if the UNIIIC would be in a position to make such arguments now.

¶ 17. (C) Emphasizing that he was now "fully aware" of the political situation surrounding the tribunal, Brammertz agreed to make several procedural arguments in favor of establishing the court if asked during consultations. He mentioned, for example, that doubts about whether the court will be created could damage the Commission's work. Many Lebanese witnesses had offered their testimony to the UNIIIC on condition that it not be shared with the Lebanese authorities, but are already asking whether, if no tribunal is ever established, the Commission turn over its files to the Lebanese. Conversely, establishing the tribunal could help the Commission's work by encouraging more witnesses to come forward -- since they would know their testimony would actually be used -- and by creating a witness protection program outside Lebanon to assuage potential witnesses, security concerns. Brammertz said he could transfer evidence "at any moment" to a prosecutor's office, and that UNIIIC intends in its June report to include a consolidated report of such evidence -- several thousand pages of crime scene evidence, interviews, a DNA database, etc. The prosecutor would then have to determine which evidence to use to prove certain charges.

¶ 18. (C) Brammertz also undertook to addresss the issue of the transition from the Commission to the tribunal. He said he had already explained to the Russians and others that it is not logical to insist that the Commission conclude its investigation before the tribunal is established, given that all other international tribunals had conducted their own investigatory work. Although it made sense not to establish the tribunal one year ago because it would not yet have had a case to try, Brammertz said that argument no longer held water. The Commission cannot prepare indictments, which only the prosecutor can do. Moreover, the tribunal could be established in phases -- first a prosecutor would take over the Commission's staff, then judges would be hired, a seat located, etc. Since it would take up to ten months to make the tribunal operational once it is established on paper, Brammertz said it was important to move forward soon. He also opined privately that it would be much more difficult to set up the tribunal after the "targets" of the Commission's

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investigations become clear. (Note: It was not clear how such targets would become known if UNIIIC will only hand over its files to a prosecutor. End Note.)

Syrian and Third-Country Cooperation

¶ 19. (C) As described in his report, Brammertz said Syrian cooperation remained "generally satisfactory," although some of the answers given by some SARG mid-level witnesses were of a "variable quality." Referring to the Commission's recent visit to Syrian Military Intelligence (SMI) archives, Brammertz said he had not expected to find any documents implicating Syrian officials in the Hariri attack, but that the visit had yielded a "great picture of the chain of command." UNIIIC had copied several thousand documents it found in the archive. When asked, Brammertz said there was no need for public statements from the USG on Syrian cooperation, because that could serve to politicize the cooperation UNIIIC already enjoys.

¶ 10. (C) Turning to cooperation from third countries, Brammertz acknowledged the controversy surrounding the January 2007 Russian initiative to demand the names of

non-cooperating states, and said he had explained to the Russian Ambassador in Beirut at the time that the demand was not helping the Commission. He had also assured the Russian Ambassador that all UNSC members were cooperating fully with UNIIC. As for the ten non-cooperating countries, Brammertz reported that he had explained to those countries, ambassadors that he might be forced to disclose their non-cooperation to the SYG on March 12 if the UNIIC's requests were not answered. All cases have now been resolved to the Commission's satisfaction.

Brammertz's Personal Plans

¶11. (C) Asked how long he planned to stay with the Commission, Brammertz said he would have to decide whether to return to his job with the International Criminal Court (ICC) in June 2007. The ICC had granted him a six-month extension in December 2006 to allow Brammertz to oversee the transition from the Commission to the tribunal, for which the UNIIC was then trying to lay the groundwork. If he made that same request again, especially given the uncertainty about the establishment of the tribunal, Brammertz said he would lose all credibility with the ICC. He did seem willing to resign from his ICC post and accept a six-month extension as Commissioner -- he again ruled out becoming the tribunal's prosecutor because that would represent a conflict with his current job -- as long as the UN could find him an alternate position once his term with UNIIC expires. (Note: USUN learned separately that Brammertz is interested in succeeding Carla del Ponte as the ICTY prosecutor, but French Mission staff advise that del Ponte has recommended that her deputy succeed her. End Note.)

WOLFF